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HIGH COURT OF CHHATTISGARH AT BILASPUR

CORAM : Hon'ble Shri H.L.Dattu, Chief Justice &
Hon'ble Shri V.K.Shrivastava, Judge

Writ Petition No.261 of 2001

ORDER FOR CONSIDERATION

Sd/-

HON'BLE SHRI V.K. SHRIVASTAVA, J.

9 affix

Sd/-
V.K.Shrivastava
Judge

POST FOR PRONOUNCEMENT
OF THE ORDER : 03/04/2007

Sd/-
Chief Justice

HIGH COURT OF CHHATTISGARH AT BILASPUR**DIVISION BENCH**

CORAM : **HON'BLE SHRI H.L. DATTU, CJ.**
HON'BLE SHRI V.K. SHRIVASTAVA, J.

Writ Petition No.261 of 2001**PETITIONERS**

1. State of Chhattisgarh, through Secretary, Home Deptt. Chhattisgarh : Raipur
2. Superintendent of Police, Durg, Chhattisgarh

Versus

RESPONDENTS

1. Dukhharan Singh aged about 45 years S/o Ramji Singh Thakur Resident of Darhi, Tahsil : Bemetara, Distt : Durg
2. State Administrative Tribunal, through Registrar, Jabalpur (MP)

Present: Shri Sanjay S. Agrawal, G.A. for the State/petitioners.
 Smt. Hamida Siddique, counsel for respondent No.1.

ORDER

(Passed on 03rd April, 2007)

The following order of the Court was passed by

H.L. Dattu, C.J.

The State of Chhattisgarh represented by its Secretary, Home Department, the Superintendent of Police, Durg are the petitioners in this writ petition filed under Article 227 of the Constitution of India *inter alia* calling in question the correctness or otherwise of the order passed by the M.P. Administrative Tribunal, Jabalpur Bench, Jabalpur ('the Tribunal' for short) in O.A.No.1687 of 1991, dated 16-5-2000. By the impugned order, the Tribunal has allowed the application filed by the applicant/respondent No.1 herein and has set aside the imposition of penalty of dismissal from service, passed by the disciplinary authority, dated 19-2-1990 and has reserved liberty to the disciplinary authority to impose any punishment other than dismissal, removal and compulsory retirement from service.

(2) The applicant before the Tribunal was working as a Police Constable in the Police Department. While he was working at Durg, the second petitioner herein had issued a charge memo dated 13-9-1989 and in that it was alleged that the applicant had wilfully and without prior permission had remained absent from 3-5-1989 to 24-5-1989 and the other charge was that he was habitual for such unauthorized absence and on that count he was admonished earlier on three occasions. The enquiry officer appointed for the purpose of enquiry into the allegations made in the charge memo had come to the conclusion that the charge-sheeted employee is guilty of the charges alleged in the charge memo. In his report he has stated as under :

"1. दिनांक 3.5.89 से 24.5.89 तक बिना पूर्व अनुमति प्राप्ति किये कर्तव्यों से अनुपस्थित रहकर कर्तव्यहीनता एवं अनुशासनहीनता प्रदर्शित करना ।

2. पूर्व में 3 बार प्रताड़ित किये जाने के बावजूद स्वयं के आचरण में सुधार न कर कर्तव्यों से बिना पूर्व अनुमति प्राप्ति किये अनाधिकृत रूप से अनुपस्थित रहने का आदी होना ।"

(3) After accepting the findings of the enquiry officer, the disciplinary authority had passed an order dated 19-2-1990 imposing punishment of removal from service. After unsuccessful attempts before the Appellate Authorities, the applicant was before the Tribunal in O.A.No.1687/1991. The Tribunal has allowed the application filed by the applicant and has set aside the orders passed by the disciplinary authority, dismissing the applicant from service and has further directed the disciplinary authority to impose any other punishment other than dismissal, removal and compulsory retirement from service. It is the correctness or otherwise of this order, is the subject matter of this writ petition.

(4) Shri Sanjay S. Agrawal, learned Government Advocate appearing for the petitioners would submit, that the Tribunal ought not to have interfered with the punishment imposed by the disciplinary authority, unless the punishment imposed is shockingly disproportionate to the charges alleged and proved. It is further stated that the applicant/respondent No.1 herein is working in a disciplined force and any act of indiscipline by such a person sternly requires to be punished. According to learned Government Advocate, the only punishment that requires to be awarded in the instant case, was dismissal from service in view of the fact that the applicant was in the habit of remaining absent from duty without prior permission of the superior authority and on all those occasions he was admonished and warned and therefore, the Tribunal was not justified in interfering with the order of punishment imposed by the disciplinary authority. Learned Government Advocate would further submit that it is for the applicant to show how the punishment imposed by the disciplinary authority could be characterized as disproportionate to the charges alleged in the charge memo and since the applicant had failed to demonstrate the same before the Tribunal, the Tribunal ought not to have interfered with the order passed by the disciplinary authority. In aid of his submission, learned Government Advocate would rely upon the decision of the Apex Court in the case of **Mithilesh Singh vs. Union of India and others**, reported in (2003) 3 SCC 309; **State of Punjab and others vs. Bakhshish Singh**, reported in (1997) 6 SCC 381 and **State of Rajasthan and another vs. Mohammed Ayub Naz**, reported in 2006 AIR SCW 197.

(5) *Per contra*, Smt. Hamida Siddique, learned counsel appearing for respondent No.1 would submit that the disciplinary authority while imposing punishment of dismissal from service had not taken into consideration, the medical certificate that was produced by respondent No.1 and, therefore, the Tribunal was justified in modifying the punishment imposed by disciplinary authority. Apart from this, learned counsel would contend that the allegation

made against respondent No.1 was not so serious and therefore, the Tribunal was justified in modifying the order passed by the disciplinary authority. Lastly, learned counsel would submit that the judicial review of the order passed by the Tribunal in exercise of this Court's power under Article 227 of the Constitution is limited and, therefore, this Court should not interfere with the order passed by the Tribunal. In support of her contention, the learned counsel relies on certain observations made by the Apex Court in the case of **Bhagat Ram Vs. State of Himachal Pradesh and others**, reported in (1983)2 SCC -442, wherein the Court has observed that the punishment must be proportionate to the gravity of misconduct and dismissal on trivial charge of no loss to the revenue is disproportionate and excessive.

(6) The learned counsel further relies on the observations made by the Apex Court in the case of **Malkiat Singh Vs. State of Punjab and others**, reported in 1996 (2) SLR-17, wherein the Court taking into consideration the facts and circumstances pleaded in the case has set aside the order of dismissal from service imposed by the disciplinary authority, however with a caveat that if the delinquent employee absents himself for two consecutive days within one year without permission, he would be dismissed from service.

(7) Reference is made to the decision of the Apex Court in the case of **Union of India and others vs. R.K. Sharma**, reported in AIR 2001 SC 3053, wherein the Court has observed that once a army personnel is found to be guilty of the charges made against him it is not open to the Court to interfere with the sentence awarded by the Court Martial. The awarding of sentence is within the powers of the Court Martial. These are not matters in which Court should interfere. While exercising powers under Article 226 or 227 and/or under Article 32 of the Constitution of India, the Court cannot interfere with the punishment merely because it considers the punishment to be disproportionate.

It is only in exceptional cases, which on their face show perversity or

irrationality that there can be judicial review. Merely on compassionate grounds Courts should not interfere.

(8) In the present case, the disciplinary authority had issued a charge memo dated 13-9-1989. In that, he had alleged that the applicant/respondent No.1 herein had remained absent from 3-5-1989 to 24-5-1989. The other charge was that he was habitual for such unauthorized absence and, therefore, he was admonished earlier on three occasions. In the enquiry proceedings held before the enquiry officer, he had stated that he had remained absent due to his ill-health on 3-5-1989 till 24.5.1989, but has produced the medical certificate issued by the doctor dated 8.5.1989 and that only means that for his so called serious ailment he had not visited the doctor prior to 8.5.1989. Therefore, his version that he was prevented from serious ailment from attending to his duty on 3rd of May, 1989 and subsequent days was rightly not believed by the enquiry officer. It is not for the first time the applicant had remained unauthorizedly absent and even earlier he had remained absent unauthorizedly and for that act of misconduct he was warned by his superior officers. Taking into consideration his previous conduct and the present conduct of unauthorized absence the disciplinary authority had imposed a punishment of removal from service.

(9) The principle of proportionality of the punishment ordains that administrative measures must not be more drastic than are necessary for attaining the desired results. "Proportionality" it is held requires the Court to judge whether the action taken was really needed as well as whether it was within the range of courses of action that could reasonably be followed. Proportionality is therefore a more exacting test in some situations and is then to be as requiring the Court to substitute its own judgment for that of proper authority. The doctrine of proportionality may require a review Court to assess the balance which the decision-maker has struck not merely whether it is within

the range of rational or reasonable decision. Secondly, the proportionality test may go further than the traditional ground of review, inasmuch as it may require attention to be directed to the relative weight accorded to the interest and consideration. In **Ranjit Thakur's case, (1987) 4 SCC 611**, the Supreme Court has observed that the judicial review of the Courts and the Tribunals is limited to three grounds as explained by the Apex Court in the case of **State of A.P. and others vs. McDowell & Co. and others**, reported in **1996(3) SCC 709**. They are (i) unreasonableness which can more appropriately be called irrationality, (ii) illegality and (iii) procedural impropriety.

(10) At the outset, it needs to be maintained that the Tribunal in cases of departmental enquiry and the findings recorded therein, does not exercise the powers of the appellate Court. Their jurisdiction is very much limited, for instance, where it is found that the domestic enquiry is vitiated because of non-observation of principles of natural justice, denial of reasonable opportunity, findings which are based on no evidence or the punishment is wholly disproportionate to the proved misconduct of the employee.

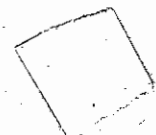
(11) In the instant case, a person working in a disciplined force had not only remained absent once, but on several occasions. On the earlier occasions, the disciplinary authority taking a compassionate view of the matter had only admonished him and had warned him. The applicant/Police Constable did not improve his conduct and continued to remain absent unauthorizedly or without prior permission of the superior authorities. In a case of this nature, in order to maintain the discipline in the force the only punishment that would have been awarded is dismissal from service and that has been done by the disciplinary authority.

(12) It is not the case made out before the Tribunal by the applicant that the evidence against him is not sufficient to impose a major punishment of dismissal from service. In fact, the disciplinary authority had examined three

witnesses and had also marked five documents to prove that the delinquent employee had remained absent on earlier occasions and also with effect from 3-5-1989 to 24-5-1989. Taking into consideration the gravity of the misconduct committed by a person working in a disciplined force, the disciplinary authority had imposed a punishment of removal from service and that punishment could not have been lightly be interfered by the Tribunal on the ground that the punishment so imposed is disproportionate and would shock the conscience of the Tribunal. In fact, the Tribunal while addressing itself for modifying the penalty imposed by the disciplinary authority, had not even taken into consideration the misconduct committed by the applicant on earlier three occasions. In fact, it was one of the allegations made in the charge-memo against the delinquent employee and those charges were proved by the disciplinary authority before the enquiry officer. The Tribunal should have also taken into consideration the award of punishment of removal from service by the disciplinary authority from the point of view of maintaining the discipline in the police force. Flea-bite penalties against the employees in a disciplined force do not seem to accord with the call of times.

(13) The Supreme Court in the case of **P.D. Agrawal Vs. State Bank of India and others**, reported in **(2006) 8 SCC 776** has observed the question as regards the jurisdiction of the Court to interfere with the quantum of punishment, it is well known is limited and while exercising the said jurisdiction the Court only in very exceptional cases interferes therewith.

(14) The Supreme Court in the case of **A. Sudhakar Vs. Postmaster General, Hyderabad and another**, reported in **(2006) 4 SCC 348**, after referring to the observations made by the Apex Court in **Hombe Gowda Educational Trust Vs. State of Karnataka**, has stated that the Tribunal's jurisdiction is akin to one under Section 11-A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another, but it is also trite that the



Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.

(15) In **North East Karnataka RT Corpn. Vs. Ashappa**, reported in (2006) 5 **SCC 137** the Supreme Court has stated as under :

"8. Remaining absent for a long time, in our opinion, cannot be said to be a minor misconduct. The appellant runs a fleet of buses. It is a statutory organization. It has to provide public utility services. For running the buses, the service of the conductor is imperative. No employer running a fleet of buses can allow an employee to remain absent for a long time. The respondent had been given opportunities to resume his duties. Despite such notices, he remained absent. He was found not only to have remained absent for a period of more than three years, his leave records were seen and it was found that he remained unauthorizedly absent on several occasions. In this view of the matter, it cannot be said that the misconduct committed by the respondent herein has to be treated lightly."

(16) In **Mithilesh Singh Vs. Union of India and others**, reported in (2003) 3 **SCC 309**, the Supreme Court has observed that unauthorized absence without prior intimation of leave to the higher authorities would amount to misconduct and in the cases of that nature, the scope of judicial review with regard to the penalty or punishment is very limited and that can only be done if the punishment appears to be shockingly disproportionate.

(17) In view of the above discussion, we are of the view that the Tribunal on mere compassion could not have interfered with the order of punishment imposed by the disciplinary authority and further could not have directed the disciplinary authority to impose any other punishment other than dismissal, removal or compulsory retirement from service. Therefore, the order passed by the Tribunal requires to be interfered with. Accordingly, the order passed by

the Tribunal is set aside and the order passed by the disciplinary authority is confirmed. Ordered accordingly.

Sd/-
Chief Justice

Sd/-
V.K. Shrivastava
Judge